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1978

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXIII] Trivandrum, Monday, 21st August 1978 / 30th Sravana 1900 [No. 547

ELECTION COMMISSION OF INDIA

Ashok Road, New Delhi-1.

Dated, 21 *August*, 1978 / *Sravana* 30, 1900 (*Saka*).

NOTIFICATION

No.100/KL-LA/1/78(1).—Whereas a vacancy has occurred in the Kerala Legislative Assembly by reason of the death of Shri M. P. Narayanan Nair, a member elected to that House from 136-Trivandrum East assembly constituency;

Now, therefore, in pursuance of the provisions of sub-section (1) of section 150 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby calls upon the said constituency to elect, before 26 September, 1978 (Tuesday), in accordance with the provisions of said Act and of the Rules and Orders made thereunder, a person to fill the said vacancy.

By order,

(Sd.)

T. Nagaratnam,

Secretary to the

Election Commission of India.

33/3292/MC.

ELECTION COMMISSION OF INDIA

Ashok Road, New Delhi-1.

Dated, 21 *August*, 1978 / *Sravana* 30, 1900 (*Saka*).

NOTIFICATION

No.100/KL-LA/1/78 (2).—In pursuance of the provisions of section 30 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby appoints, with respect to the bye-election to be held in 136-Trivandrum East assembly constituency in the State of Kerala, in pursuance of its notification No.100/KL-LA/1/78(1). dated 21 August, 1978:—

(a) 28 August, 1978 (Monday) as the last date for making nominations;

(b) 29 August, 1978 (Tuesday) as the date for the scrutiny of nominations;

(c) 31 August, 1978 (Thursday) as the last date for the withdrawal of candidatures;

(d) 22 September, 1978 (Friday) as the date on which a poll shall, if necessary, be taken; and

(e) 26 September, 1978 (Tuesday) as the date before which the election shall be completed.

By order,

(Sd.)

T. NAGARATNAM

Secretary to the Election Commission of India.

ELECTION COMMISSION OF INDIA

Ashok Road, New Delhi-1.

Dated, 21 *August*, 1978 / *Sravana* 30, 1900 (*Saka*).

NOTIFICATION

No.100/KL-LA/1/78(3).—In pursuance of section 56 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby fixes, 7.00 A. M. to 5.00 P. M. as the hours during which a poll shall, if necessary, be taken for the bye-election to the Kerala Legislative Assembly from 136-Trivandrum East assembly constituency to be held in pursuance of its notification No.100/KL-LA/1/78(1) dated 21 August, 1978.

By order,

Sd.

T. NAGARATNAM,

Secretary

to the Election Commission of India.

ഇൻഡ്യാ തിരഞ്ഞെടുപ്പു കമ്മീഷൻ

അശോക റോഡ്,

ന്യൂഡെൽഹി—1.

1978 ആഗസ്റ്റ്, 21 / 1900 ശ്രാവണം, 30 (ശകവർഷം)

വിജ്ഞാപനം

നമ്പർ. 100/കെ എൽ—എൽ എ/1/78 (1).—136 - തിരുവനന്തപുരം ഈസ്റ്റ് അസംബ്ലി നിയോജകമണ്ഡലത്തിൽനിന്നും കേരള നിയമസഭയിലേക്ക് തിരഞ്ഞെടുക്കപ്പെട്ട അംഗമായിരുന്ന ശ്രീ. എം. പി. നാരായണൻ നായരുടെ നിര്യാണംമൂലം ആ സഭയിൽ ഒരു ഒഴിവുണ്ടായിരിക്കയാൽ;

ഇപ്പോൾ, അതിനാൽ, 1951—ലെ ജനപ്രാതിനിധ്യ ആക്ട്. (1951—ലെ 43) 150—ാം വകുപ്പ് (1)—ാം ഉപവകുപ്പിലെ വ്യവസ്ഥകളനുസരിച്ച്, 1978 സെപ്റ്റംബർ 26 (ചൊവ്വാഴ്ച)—ന് മുമ്പായി, പ്രസ്തുത ആക്ടിലെയും അതിൻകീഴിൽ ഉണ്ടാക്കിയ ചട്ടങ്ങളിലെയും ഉത്തരവുകളിലെയും വ്യവസ്ഥകൾ പ്രകാരം പ്രസ്തുത ഒഴിവു നികത്തുന്നതിന് ഒരാളിനെ തിരഞ്ഞെടുക്കാൻ പ്രസ്തുത നിയോജകമണ്ഡലത്തോട് തിരഞ്ഞെടുപ്പു കമ്മീഷൻ ഇതിനാൽ ആവശ്യപ്പെടുന്നു.

ഉത്തരവുപ്രകാരം,

(ഒപ്പ്)

റി. നാഗരത്നം,

ഇൻഡ്യാ തിരഞ്ഞെടുപ്പു കമ്മീഷൻ സെക്രട്ടറി.

ഇൻഡ്യാ തിരഞ്ഞെടുപ്പു കമ്മീഷൻ

അശോക റോഡ്,
ന്യൂഡെൽഹി—1.

1978 ആഗസ്റ്റ്, 21.
1900 ശ്രാവണം, 30 (ശകവർഷം)

വിജ്ഞാപനം

നമ്പർ. 100/കെഎൽ—എൽഎ/1/78 (2).—1951—ലെ ജനപ്രാതിനിധ്യ ആക്ട് (1951—ലെ 43) 30—ാം വകുപ്പിലെ വ്യവസ്ഥകളനുസരിച്ച്, തിരഞ്ഞെടുപ്പു കമ്മീഷൻ, അതിന്റെ 1978 ആഗസ്റ്റ് 21—ാം തീയതിയിലെ 100/കെ.എൽ—എൽ എ/1/78(1) നമ്പർ വിജ്ഞാപനമനുസരിച്ച് കേരള സംസ്ഥാനത്തെ 136—തിരുവനന്തപുരം ഈസ്റ്റ് അസംബ്ലി നിയോജക മണ്ഡലത്തിലേക്ക് നടത്തേണ്ട ഉപതിരഞ്ഞെടുപ്പു സംബന്ധിച്ച്:—

(എ) 1978 ആഗസ്റ്റ്, 28 (തിങ്കളാഴ്ച) നാമനിർദ്ദേശ പത്രികകൾ സമർപ്പിക്കുന്നതിനുള്ള അവസാന തീയതിയായും;

(ബി) 1978 ആഗസ്റ്റ്, 29 (ചൊവ്വാഴ്ച) നാമനിർദ്ദേശ പത്രികകളുടെ സൂക്ഷ്മ പരിശോധന നടത്തുന്നതിനുള്ള തീയതിയായും;

(സി) 1978 ആഗസ്റ്റ്, 31 (വ്യാഴാഴ്ച) സ്ഥാനാർത്ഥിത്വം പിൻവലിക്കുന്നതിനുള്ള അവസാന തീയതിയായും;

(ഡി) 1978 സെപ്റ്റംബർ, 22 (വെള്ളിയാഴ്ച) ആവശ്യമുള്ളപക്ഷം, പോൾ എടുക്കുന്നതിനുള്ള തീയതിയായും;

(ഇ) 1978 സെപ്റ്റംബർ, 26 (ചൊവ്വാഴ്ച) ഏതു തീയതിക്കു മുമ്പാണോ തിരഞ്ഞെടുപ്പു പൂർത്തിയാക്കേണ്ടത് ആ തീയതിയായും

ഇതിനാൽ നിശ്ചയിക്കുന്നു.

ഉത്തരവുപ്രകാരം,

(ഒപ്പ്)

റി. നാഗരത്നം,
ഇൻഡ്യാ തിരഞ്ഞെടുപ്പു കമ്മീഷൻ സെക്രട്ടറി.

ഇൻഡ്യാ തിരഞ്ഞെടുപ്പു കമ്മീഷൻ

അശോക റോഡ്,
ന്യൂഡെൽഹി—1.

1978 ആഗസ്റ്റ്, 21
1900 ശ്രാവണം, 30 (ശകവർഷം).

വിജ്ഞാപനം

നമ്പർ 100/കെഎൽ—എൽഎ/1/78 (3).—1951—ലെ ജനപ്രാതിനിധ്യ ആക്ട് (1951—ലെ 43) 56—ാം വകുപ്പനുസരിച്ച്, തിരഞ്ഞെടുപ്പു കമ്മീഷൻ 1978 ആഗസ്റ്റ് 21—ാം തീയതിയിലെ അതിന്റെ 100/കെ എൽ—എൽ എ/1/78(1) നമ്പർ വിജ്ഞാപനമനുസരിച്ച് 136-തിരുവനന്തപുരം ഈസ്റ്റ് അസംബ്ലി നിയോജകമണ്ഡലത്തിൽ നിന്ന് കേരള നിയമസഭയിലേക്ക് നടത്തേണ്ട ഉപതിരഞ്ഞെടുപ്പിൽ, ആവശ്യമുള്ളപക്ഷം, പോൾ എടുക്കുന്നതിനുള്ള സമയം രാവിലെ 7 മണി മുതൽ വൈകിട്ട് 5 മണിവരെ ആയി ഇതിനാൽ നിശ്ചയിക്കുന്നു.

ഉത്തരവുപ്രകാരം,

(ഒപ്പ്)
റ്റി. നാഗരത്നം,
ഇൻഡ്യാ തിരഞ്ഞെടുപ്പു കമ്മീഷൻ സെക്രട്ടറി.

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KERALA GAZETTE
EXTRAORDINARY
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Vol. XXIII] Trivandrum, Monday, 21st August 1978 / 30th Sravana 1900 [No. 543

SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 6605/LA4A/78. *Dated, Trivandrum, 21st August* 1978.

The Kerala Public Men (Investigation into Misconduct) Bill, 1978 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. Prasannan,

Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1978.

33/3334/MC.

Fifth Kerala Legislative Assembly

Bill No. 89

THE KERALA PUBLIC MEN (INVESTIGATION INTO MISCONDUCT) BILL, 1978

A

BILL

to provide for the investigation of allegations of misconduct against public men and for matters connected therewith.

Preamble.—WHEREAS it is expedient to provide for the investigation of allegations of misconduct against public men and for matters connected therewith;

BE it enacted in the Twenty-ninth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Public Men (Investigation into Misconduct) Act, 1978.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "Chief Justice" means the Chief Justice of the High Court of Kerala;

(b) "Commissioner" means the Commissioner appointed under section 4;

(c) "political party" means a political party which satisfies such conditions as may be prescribed and notified by the Government in the Gazette for the purposes of this Act;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "public man" denotes a person who holds or has held in the State the office of—

(i) a Minister or the Chief Minister; or

(ii) a member of the Legislative Assembly; or

(iii) a member or the President of the Travancore Devaswom Board or the Cochin Devaswom Board, or the Chairman of the Kerala Wakf Board; or

(iv) a non-official Chairman or Managing Director of the Managing Committee or the Board of Directors or the governing body of a corporation, board or other authority established by or under a Statute and controlled by the Government of Kerala; or

(v) a non-official Chairman or Managing Director of the Board of Directors of a Government Company in which not less than fifty-one per cent of the paid-up share capital is held by the Government of Kerala, or of any Company which is a subsidiary of a Company in which not less than fifty-one per cent of the paid-up share capital is held by the Government of Kerala; or

(vi) the Chairman or Vice-Chairman or President or Vice-President or Secretary or Treasurer of a political party at the State level;

(f) "Special Judge" means a Judge of the High Court of Kerala appointed as a Special Judge under section 12;

(g) "State" means the State of Kerala;

(h) "public servant" shall have the same meaning as in section 21 of the Indian Penal Code (Central Act 45 of 1860).

3. *Definition of misconduct.*—Whoever being a public man—

(1) accepts or obtains from any person for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering any service or dis-service to any person, with the Government or the Legislature of the State or with any Corporation or Government Company referred to in section 21 of the Indian Penal Code (Central Act 45 of 1860) or with any public servant as such; or

(2) accepts or obtains from any person for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant, to show favour or disfavour to any person or to render any service or dis-service to any person with the Government or the Legislature of the State or with any Corporation or Government Company referred to in section 21 of the Indian Penal Code (Central Act 45 of 1860) or with any public servant as such; or

(3) by corrupt or illegal means or by otherwise abusing his position as a public man obtains for himself or for any other person any valuable thing or pecuniary advantage, is said to commit misconduct.

Explanation.—(a) The word "gratification" means pecuniary gratification and gratification estimable in money.

(b) The words "legal remuneration" are not restricted to remuneration which a public man can lawfully demand, but include all remuneration which is lawfully permissible.

(c) A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within the expression "a motive or reward for doing".

4. *Appointment of Commissioner.*—(1) The Government shall, on the recommendation of the Chief Justice, appoint by notification in the Gazette, a Judge of the High Court of Kerala to be the Commissioner for the purpose of exercising the powers and performing the functions of the Commissioner under this Act.

(2) Every person appointed as Commissioner shall, before entering upon his office, make and subscribe before the Chief Justice or some person appointed by him in that behalf an oath or affirmation in the form set out for the purpose in the Schedule.

5. *Term of office and conditions of service of Commissioner.*—(1) The Commissioner shall hold office for a period of three years from the date on which he enters upon his office or till he completes the age of sixty-two years, whichever period expires earlier, and shall not be eligible for re-appointment.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner—

(a) may, by writing under his hand, addressed to the Government, resign his office;

(b) may be removed from office in the manner specified in section 6;

(c) shall, notwithstanding the expiration of his term, continue to hold his office until his successor enters upon his office.

(3) The salary and allowances and other conditions of service of the Commissioner shall be such as may be prescribed in consultation with the Chief Justice:

Provided that the salary, allowances and other conditions of service of the Commissioner shall not be varied to his disadvantage after his appointment.

(4) Any permanent vacancy in the office of the Commissioner shall be filled up by the Government in consultation with the Chief Justice and the successor so appointed may continue the proceedings from the stage at which he enters upon his office.

6. *Removal of Commissioner.*—(1) The Commissioner may be removed from his office by the Government on the ground of misbehaviour or incapacity.

(2) No proceeding shall be taken under sub-section (1) on the ground of misbehaviour unless there is a specific allegation alleging misbehaviour on the part of the Commissioner.

(3) The Commissioner shall not be removed under sub-section (1) except on the recommendation of a special Tribunal consisting of three Judges of the High Court of Kerala nominated from time to time by the Chief Justice in that behalf for making an investigation into the grounds for the removal of the Commissioner.

(4) The Special Tribunal shall frame definite charges against the Commissioner on the basis of which the investigation is proposed to be held.

(5) Such charges together with a statement of the grounds on which each such charge is based shall be communicated to the Commissioner and he shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified in this behalf by the Special Tribunal.

(6) Where the ground alleged is misbehaviour on the part of the Commissioner, the person who made such allegation shall also be heard by the Special Tribunal.

(7) Subject to any rules that may be made by the Government in this behalf in consultation with the Chief Justice, the Special Tribunal shall have power to regulate its own procedure.

(8) The Special Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), when trying a suit.

(9) At the conclusion of the investigation, the Special Tribunal shall present its recommendation to the Government.

7. *Petition for initiating proceedings.*—(1) Any person may present a petition to the Commissioner with an additional copy for service on the opposite party, requesting that any allegation of misconduct against any public man specified in such petition may be investigated under this Act.

(2) Every petition under sub-section (1) shall be accompanied by an affidavit in support of the allegation contained therein and a treasury receipt evidencing the deposit of a sum of one thousand rupees:

Provided that no such treasury receipt shall be necessary where the petition is presented by not less than ten members of the Legislative Assembly jointly.

(3) Every petition under sub-section (1) as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908), for the verification of pleadings.

8. *Commissioner not to initiate proceedings in certain cases.*—The Commissioner shall not take any action to conduct an investigation under this Act—

(a) if the petition does not comply with the provisions of section 7; or

(b) if the misconduct is alleged to have taken place before a period of five years immediately preceding the date of presentation of the petition under section 7; or

(c) in respect of a misconduct alleged to have taken place before the commencement of this Act, if the presentation of the petition under section 7 is after the expiry of a period of three months from such commencement.

9. *Preliminary investigation.*—(1) On receipt of a petition under section 7, the Commissioner shall, in a case not falling under section 8, scrutinise the allegation contained therein and shall furnish a copy of the petition to the public man concerned and also give the petitioner and the public man concerned an opportunity of being heard in the matter.

(2) The Commissioner shall call for any relevant information or document in respect of the allegation of misconduct from the petitioner or the Government or any other person or authority, who or which, in the opinion of the Commissioner, is in possession of such information or document, and thereupon the petitioner or the Government or other person or authority, as the case may be, shall be bound to furnish such information or produce such document.

(3) Every preliminary investigation under this section shall be conducted in private and in camera and in particular, the identity of the petitioner or the public man affected by such investigation shall not be disclosed to the public or the press whether before, during or after such investigation.

(4) Save as aforesaid, the procedure for conducting any such investigation shall be such as the Commissioner considers appropriate in the circumstances of the case.

10. *Result of preliminary investigation and further action.*—(1) If, after the preliminary investigation under section 9, the Commissioner is of opinion that the allegation is without substance or trivial in nature or that further investigation is not likely to prove useful, he shall record a finding to that effect and report to the Government accordingly, stating his reasons for such finding.

(2) The Commissioner shall in cases not falling under sub-section (1) report the result of the preliminary investigation to the Government along with the petition and the records of such investigation.

11. *Reference by Government.*—(1) The Government shall, as soon as they receive a report under sub-section (2) of section 10, refer the report along with the petition and the records of the preliminary investigation to the Commissioner himself or to a Special Judge appointed for the purpose under section 12 for a detailed investigation in regard to the petition.

12. *Appointment of Special Judge.*—(1) The Government shall on the recommendation of the Chief Justice appoint a Judge of the Kerala High Court as Special Judge for each petition in respect of which a report has been made to the Government under sub-section (2) of section 10 and the Government have decided to refer such repor to a Special Judge:

Provided that no person shall be appointed as a Special Judge except with his consent.

(2) Any vacancy in the office of a Special Judge shall be filled in by the same procedure as mentioned in sub-section (1) and a Special Judge appointed in consequence thereof may proceed from the stage at which the vacancy occurs.

13. *Procedure on receipt of reference under section* 11.—(1) The Commissioner or the Special Judge on receiving a reference under section 11 shall proceed to make a detailed investigation in regard to the petition.

(2) The Commissioner or the Special Judge, as the case may be, shall, subject to the provisions of this Act and of the rules made thereunder, have power to regulate his own procedure including the fixing of the time and place of sitting.

(3) Every investigation by the Commissioner or the Special Judge shall be held in private and in camera.

(4) The public man against whom misconduct has been alleged and the petitioner shall have the right to be represented in person or by counsel.

(5) The Commissioner or the Special Judge may, if he considers necessary to do so, having regard to the nature and circumstances of the case under investigation, appoint a counsel to assist him on such terms and conditions as may be prescribed.

(6) The Commissioner or the Special Judge may, at any stage, also permit—

(a) any witness, or

(b) any other person,

who claims that he is to be represented in person or by counsel to take such part in the proceedings as the Commissioner or the Special Judge, as the case may be, may in the interest of justice think fit.

14. *Reports of Commissioner and Special Judge.*—(1) The Commissioner or the Special Judge shall at the end of the investigation record his findings stating the reasons therefor and report the same to the Government with his recommendations.

(2) Where the Commissioner or the Special Judge is of opinion that it is expedient in the interests of justice that the public man against whom misconduct has been alleged or any other person concerned with the subject matter of the allegation should be prosecuted for any offence referred to in section 6 of the Criminal Law Amendment Act, 1952 (Central Act 46 of 1952), he shall, if no prosecution for such offence has already been initiated against that public man or other person in any court, record a finding to that effect stating his reasons therefor.

(3) Where a finding referred to in sub-section (2) is recorded by the Commissioner or the Special Judge, the Government shall take all necessary steps for the prosecution of the persons concerned.

(4) Where the Commissioner or the Special Judge is of opinion—

(a) that the allegation of misconduct against a public man has been made with improper motives or with intent to cause injury to him or knowing that there is no just or lawful ground for making such allegation; and

(b) that the person who made the allegations should be prosecuted, he shall record a finding to that effect stating the reasons therefor and initiate proceedings without reference to the Government for the prosecution of the persons concerned.

(5) The Government shall cause every report under this section to be laid before the Legislative Assembly together with a memorandum of the action taken thereon within a period of six months of the submission of the report to the Government.

15. *Costs.*—(1) The Commissioner or the Special Judge may, in case the allegation is found to be without subtance or is trivial in nature or is not substantiated, order the petitioner to pay such amount of costs as may be specified in the order to the public man against whom the allegation has been made or to any other person referred to in sub-section (6) of section 13.

(2) The Commissioner or the Special Judge may order any part of the costs ordered to be paid under sub-section (1) to be paid out of any amount deposited under section 7 and issue a certificate of recovery in respect of the remainder, if any.

(3) Any person in whose favour a certificate is issued under sub-section (2) may apply to the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person against whom the certificate is issued has a place of residence or business, for recovery of the amount

specified in the certificate, and such court shall thereupon execute the certificate or cause the same to be executed in the manner and by the same procedure as if it were a decree for the payment of money passed by itself in a suit.

16. *Powers of Commissioner and Special Judge.*—(1) The Commissioner and the Special Judge and officers authorised by the Commissioner or the Special Judge shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) equisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed.

(2) The Commissioner or the Special Judge or any officer authorised by the Commissioner or the Special Judge in this behalf may enter and search any building or place where the Commissioner or the Special Judge, as the case may be, has reason to believe that any books of account or other documents relevant to the subject-matter of the inquiry may be found, and may seize any such books of account or documents or take extracts or copies therefrom.

(3) The provisions of section 100 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall, so far as may be, apply to searches under sub-section (2).

(4) Any proceeding before the Commissioner or the Special Judge shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860).

17. *Statements made to the Commissioner or the Special Judge.*—(1) Subject to the provisions of sub-section (2) no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the Government or any public servant, whether imposed by any enactment or by any rule or law, shall apply to the disclosure of information for the purpose of any investigation under this Act and the Government or any public servant shall not be entitled to in relation to any such investigation to any such privilege in respect of production of documents or giving evidence as is allowed by any enactment or by any rule of law in legal proceedings.

(2) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document, as might prejudice the security or defence or international relations of India (including India's relations with the Government of any other country or with any international organisation), or the investigation or detection of crime, and for the purpose of this sub-section a certificate issued by a Secretary to the Government of Kerala or of the Government of India, as the case may be, certifying that any information, answer or portion of a document is of the nature specified in this sub-section shall be binding and conclusive.

(3) Subject to the provisions of sub-section (1) no person shall be compelled for the purpose of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a court.

(4) No statement made by a person in the course of giving evidence before the Commissioner or the Special Judge shall subject him to, or be used against him, in any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

(a) is made in reply to a question he is required by the Commissioner or the Special Judge to answer; or

(b) is relevant to the subject matter of the investigation.

18. *Staff of the Commissioner and Special Judge.*—(1) Officers and other employees necessary to assist the Commissioner in the discharge of his functions under this Act shall be appointed by the Government.

(2) The categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Commissioner shall be such as may be prescribed after consultation with the Commissioner.

(3) The officers and employees appointed under sub-section (1) shall assist the Special Judge in the discharge of his functions under this Act.

(4) Without prejudice to the provisions of sub-section (1) or sub-section (3) the Commissioner or the Special Judge may utilise the services of any investigating agency of the Government for the purposes of conducting any investigation under this Act:

Provided that the Commissioner or the Special Judge shall obtain the consent of the Government before utilising the services of any such agency.

19. *Secrecy of information.*—(1) Any information obtained by the Commissioner or the Special Judge or members of their staff or any investigating

agency in the course of, or for the purposes of any investigation under this Act and any evidence recorded or collected in connection with such investi- gation shall be treated as confidential and notwithstanding anything con- tained in the Indian Evidence Act, 1872 (Central Act 1 of 1872), no court shall be entitled to compel the Commissioner or Special Judge to give evi- dence relating to such information or produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars—

(a) for the purpose of the investigation or in any report to be made thereon or for any action or proceedings to be taken on such report; or

(b) for the purposes of any proceedings for an offence under the Official Secrets Act, 1923 (Central Act 19 of 1923) or any offence of giving or fabricating false evidence under the Indian Penal Code (Central Act 45 of 1860) or for purposes of any proceeding under section 28; or

(c) for such other purposes as may be prescribed.

(3) No person shall publish any proceeding relating to an investigation which is pending before the Commissioner or the Special Judge, as the case may be. Nor shall any person publish such proceeding after the investigation is completed unless prior permission for the publication is obtained from the Commissioner or the Special Judge, as the case may be.

(4) Whoever contravenes the provisions of sub-section (3) shall be punished with simple imprisonment for a term which may extend to two years of with fine or with both.

(5) Nothing in sub-sections (3) and (4) shall apply to the publication of any report laid before the Legislative Assembly.

20. *Protection of action taken under the Act.*—(1) No suit, prosecution or other legal proceeding shall lie against the Commissioner or the Special Judge or against any officer, employee, agency or person referred to in sec- tion 1C in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceeding of the Commissioner or the Special Judge shall be held invalid for want of form and except on the ground of jurisdiction, no proceeding or decision of the Commissioner or the Special Judge shall be liable to be challenged, reviewed or called in question in any court.

21. *Power of Government to refer any allegation of misconduct to the Commissioner.*— (1) Where any allegation of misconduct against any public man is or has been brought to the notice of the Government, they may, if they are satis- fied that it is necessary in the public interest that the allegation of misconduct

should be investigated under this Act, by order in writing and subject to such conditions and limitations as may be specified in the order, require the Commissioner to investigate the allegation of misconduct and notwithstanding anything contained in this Act, the Commissioner shall comply with such order.

(2) For the purposes of this Act, the person who made the allegation of misconduct referred to in sub-section (1) shall be deemed to be the petitioner.

22. *Powers of Commissioner in respect of investigation under section 21.*—When the Commissioner is required to investigate any allegation of misconduct under section 21, the Commissioner shall exercise the same powers as he would in the case of any investigation made on petitions and the provisions of this Act shall apply accordingly.

23. *Power of Commissioner or Special Judge to try certain offences summarily.*—(1) If, at any stage of a proceeding before the Commissioner or the Special Judge, it appears to the Commissioner or the Special Judge that any person appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, the Commissioner or the Special Judge, as the case may be, may, if satisfied that it is necessary and expedient in the interests of justice that the person should be tried summarily for giving or fabricating, as the case may be, false evidence take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he shoul not be punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), and sentence him to imprisonment for a term which may extend to three months or to fine which may extend to five hundred rupees, or to both.

(2) In every case tried under this section, the Commissioner or the Special Judge, as the case may be, shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and the sentence.

(3) Any person convicted on a trial held under this section may appeal to the High Court and the provisions of Chapter XXIX of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall, so far as may be, apply to appeals under this section and the High Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(4) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) Words and expressions used in this section and not defined in this Act shall have the same meaning as in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

24. *Power to delegate.*—The Commissioner or the Special Judge may, by general or special order in writing, direct that any powers conferred or duties imposed on him by or under this Act (except the power to make investigation or to report to the Government) may also be exercised or discharged by such of the officers, employees or agencies referred to in section 18 as may be specified in the order.

25. *Bar to inquiries.*—No formal or open inquiry into any allegation of misconduct by any public man, in respect of which a petition has been presented under section 7 or a reference has been made under section 21 shall be made at the instance of the Government either under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952) or by any other order or resolution of the Government, but nothing herein contained shall be construed as affecting any right or power of any other person or authority under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or under any other law for the time being in force, or as affecting the constitution of, or the continuance of the functioning of or exercise of powers by, any Committee or Commission of Inquiry appointed before the commencement of this Act.

26. *Refund or forfeiture of deposit.*—(1) The sum deposited by any petitioner under section 7 shall be disposed of in accordance with the provisions of sub-sections (2) and (3).

(2) Where the Commissioner to whom a petition is presented under section 7 makes a report in respect thereof under sub-section (1) of section 10 that the allegation is without substance or is trivial in nature, the sum shall be forfeited to the Government.

(3) In any other case, the Commissioner shall, at the end of the investigation, make such orders in respect of the sum as, having regard to the circumstances of the case, he thinks fit.

27. *Pendency of case not to bar proceedings under this Act.*—The pendency of any civil or criminal case in the High Court or any court subordinate thereto in respect of any allegation of misconduct shall not bar the scrutiny, investigation or inquiry of or into that allegation under this Act and no such scrutiny, investigation or inquiry shall be deemed to amount to contempt of such court.

28. *Intentional insult, etc., to the Commissioner or Special Judge.*—(1) Whoever intentionally offers any insult, or causes any interruption, to the Commissioner or the Special Judge, while he is conducting any investigation under this Act, shall be punishable with simple imprisonment for a term which may extend to two years, or with fine, or with both.

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Commissioner or the Special Judge into disrepute, shall be punishable with simple imprisonment for a term which may extend to two years, or with fine, or with both.

(3) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of the said section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Commissioner or the Special Judge, as the case may be.

29. *False allegation of misconduct to be punishable.*—(1) Whoever makes any allegation of misconduct against a public man with improper motive or with intent to cause injury to him or knowing that there is no just or lawful ground for making such allegation, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

(2) No Court shall take cognisance of any offence under sub-section (1) except with the previous sanction of the Commissioner.

30. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for—

(a) the form in which petitions may be made under section 7;

(b) the conditions of service of the Commissioner;

(c) the powers of civil court which may be vested in the Commissioner;

(d) the deposit, forfeiture, refund or disposal of sums referred to in section 7;

(e) any other matter which has to be or may be prescribed under this Act.

(3) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule or that the rules should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[*See* section 4 (2)]

I,........................... having been appointed Commissioner do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, and I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill.

STATEMENT OF OBJECTS AND REASONS

At present there is no legislation in this State to provide for the investigation of allegations of misconduct against persons like the Chief Minister, Ministers, Members of Legislative Assembly, leaders of political parties etc. who are or had been in public life. It is considered necessary to enact such a legislation in this State to enable every citizen to make a complaint of misconduct against a public man and to prove his complaint, to prescribe a procedure for investigation of such complaints and to provide for an independent machinery to investigate such complaints.

2. The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to provide for the appointment of a Judge of the High Court as Commissioner for investigation into allegations of misconduct against public men. According to sub-clause (3) of clause 5 of the Bill the salary and allowances and other conditions of service of the Commissioner shall be such as may be prescribed in consultation with the Chief Justice, provided that the salary, allowances and other conditions of service of the Commissioner shall not be varied to his disadvantage after his appointment. Clause 12 of the Bill seeks to provide for the appointment of a Judge of the High Court, as Special Judge for conducting detailed investigation on each petition in respect of which a report has been made by the Commissioner to the Government and the Government have decided to refer such report to a Special Judge. Clause 18 seeks to provide for the appointment of officers and other employees to assist the Commissioner and the Special Judge in the discharge of their functions.

2. A substantial amount of expenditure will be incurred on account of the appointment of the Commissioner, the Special Judge and the officers and staff of the Commissioner and for payment of travelling allowance and daily allowance to the witnesses who may be summoned by the Commissioner and the Special Judge. The approximate expenditure on account of the

above matters can be estimated only when the Commissioner, Special Judge and necessary officers and staff are appointed. The expenditure in connection with the travelling allowance and daily allowance payable to the witnesses will depend upon the number and nature of the petitions received. Expenditure which may have to be incurred for the maintenance of offices cannot also be estimated now. Therefore it is not possible at this stage to estimate with any degree of accuracy the expenditure which has to be incurred by the enactment of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (c) of clause 2 of the Bill seeks to empower the Government to prescribe the conditions that have to be satisfied for a political party for being considered as a political party for the purpose of the Bill. Clause 4 of the Bill seeks to empower the Government to appoint on the recommendation of the Chief Justice and by notification in the Gazette, a Judge of the High Court of Kerala to be the Commissioner for the purpose of exercising the powers and performing the functions of the Commissioner under the Act. Sub-clause (3) of clause 5 seeks to empower the Government to prescribe, in consultation with the Chief Justice, the salary and allowances and other conditions of service of the Gommissioner. Sub-clause (7) of clause 6 seeks to provide that the Special Tribunal shall regulate its own procedure subject to the rules made by the Government in consultation with the Chief Justice of the Kerala High Court. Sub-clause (1) of clause 12 seeks to empower the Government to appoint on the recommendation of the Chief Justice a Judge of the Kerala High Court as Special Judge for each petition in respect of which a report has been made to the Government under sub-section (2) of section 10 and the Government have decided to refer such report to a Special Judge. Sub-clause (5) of clause 13 seeks to empower the Government to prescribe the terms and conditions of appointment of a counsel appointed by the Commissioner or the Special Judge to assist him. Sub-clause (2) of clause 18 seeks to empower the Government to prescribe in consultation with the Commissioner the categories of officers and employees who may be appointed to assist the Commissioner, their salaries, allowances and other conditions of service and the administrative powers of the Commissioner. Item (c) of sub-sclause (2) of clause 19 seeks to empower the Government to prescribe the purposes, other than those specified in items (a) and (b), for which any information or particulars referred to in the clause may be disclosed.

2. Clause 30 of the Bill seeks to empower the Government to make rules for carrying out the purposes of the Act. Such rules may provide *inter alia* for the form in which petitions may be made under section 7, the powers of civil court which may be vested in the Commissioner and the deposit, forfeiture, refund or disposal of sums referred to in section 7.

3. The above are matters of procedure or detail or of an administrative nature. Further, the rules after they are made are subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is thus of a normal character.

P. J. JOSEPH

Government of Kerala
1978

Reg. No. KL/TV/12

KERALA GAZETTE
EXTRAORDINARY
PUBLISHED BY AUTHORITY

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ELECTION COMMISSION OF INDIA

New Delhi,
Dated, *19th August, 1978* / *Sravana 28, 1900(S)*

NOTIFICATION

No.282/1/KL/78.—Whereas the Government of Kerala have intimated some alterations in the number and boundaries of certain territorial divisions referred to in the description of constituencies given in Schedule XI of the Delimitation of Parliamentary and Assembly Constituencies Order, 1976;

And whereas the Commission considers it necessary and expedient to make amendments in the description of the extent of the constituencies in the Schedule XI of the Delimitation of Parliamentary and Assembly Constituencies Order, 1976, to bring the Order up-to-date;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 9 of the Representation of the People Act, 1950, the Election Commission hereby makes the corrections in the said Order as follows:—

I. In Part B, of the Schedule—

(1) In 134-Trivandrum North, in the description of the extent of the Constituency, *for* the existing entries, *substitute* the entries "Divisions 1 to 8, House Nos. 137 to 2013 of Division 10 and House Nos. 1 to 314 of Division 18 of Trivandrum Corporation and Chettivilakom, Kadakampalli, Ulloor and Vattiyoorkave Panchayats in Trivandrum Taluk";

(2) In 135-Trivandrum West, in the description of the extent of the constituency, *for* the existing entries, *substitute* the entries "Divisions 12, 13, 27 to 37, 41, 43 to 48, House Nos. 1988 to 2133 of Division 26 and House Nos. 1 to 147, 191 to 295 and 316 to 777 of Division 42 of Trivandrum Corporation"; and

(3) In 136-Trivandrum East, in the description of the extent of the constituency, *for* the existing entries, *substitute* the entries "Divisions 9, 11, 14 to 17, 19 to 25, 38 to 40, 49, 50 and House Nos. 1 to 136 of Division 10, House Nos. 315 to 2342 of Division 18, House Nos. 1 to 1987 of Division 26 and House Nos. 148 to 190 and 296 to 315 of Division 42 of Trivandrum Corporation.".

By order,

(Sd.)

V. NAGASUBRAMANIAN,

Secretary.

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